

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LEGISLATIVE ADMINISTRATION

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 27, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Sherm Anderson (R)
Sen. Bob Keenan (R)
Sen. Glenn Roush (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)
Sen. Brent R. Cromley (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Lois Menzies, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 258, 1/23/2003 HB 41, 1/23/2003;
HB 91, 1/23/2003;
Executive Action: HB 41, HB 91, SB 258

HEARING ON SB 258

Sponsor: SEN. FRED THOMAS, SD 31, BITTERROOT VALLEY

Proponents: None

Opponents: REP. NORMA BIXBY, HD 5, LAME DEER
Bob Ream, Chairman of the Montana Democratic Party

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, BITTERROOT VALLEY, introduced SB 258. He stated that this bill provides for holdover Senators to be assigned their holdover district by the Legislature, in lieu of the District Apportionment Commission. The Constitution does not grant the District Apportionment Commission the ability to assign holdover seats. The Commission is granted the ability to draw districts. He provided a copy of Article V, Section 14, of the Montana Constitution **EXHIBIT(les17a01)**. The language states that the Commission is to prepare a plan for districts and apportioning the state in legislative districts. There is no language providing for the assignment of holdover districts.

Several Senators have testified on the apportionment plan in regard to problems that were political in nature. For example, **SEN. BOHLINGER** currently represents Senate District 7. His new district is 21, which is comprised of the current Senate Districts 5 and 10. He would not represent the people who elected him in the last election. **SEN. CROMLEY** was elected from SD 9. His new district would be comprised of SD 5 and SD 7. Senate District 7 is **SEN. BOHLINGER's** existing district. **SEN. ZOOK** is currently in SD 2 which will be SD 13 in the future. Senate District 13 is comprised of SD 1 and SD 2. **SEN. BALES** has been placed in this new district. This would eliminate **SEN. ZOOK'S** Senate seat. **SEN. BUTCHER** currently represents SD 47. The new district will be SD 11 and has been given to **SEN. TESTER** as a holdover and would eliminate **SEN. BUTCHER** from his Senate seat. **SEN. ANDERSON** currently represents SD 28. His new district would be SD 35, which contains only a small portion of his current district.

The District Apportionment Commission has addressed holdover Senators in the past without the political sabotage involved in the current plan. Senate Bill 258 proposes assignments to be made by the Legislature in a Senate and House Joint Resolution. This would be based on the greatest percentage of population in the new district that had voted for the Senator. Residence would also be taken into consideration.

Proponents' Testimony: None

Opponents' Testimony:

REP. NORMA BIXBY, HD 5, LAME DEER, stated that it appears the GOP has decided to elect their representatives by establishing unconstitutional law to stop the redistricting process. It is easier to win a campaign by law rather than hard work based on your record as a legislator or on a good message for Montana. The Constitution establishes the redistricting process. The Legislature cannot change the Constitution by passing a law. The Commission's final plan does include the assignment of 25 holdover Senators to new districts to ensure the constitutional rights of holdover Senators to complete their four year terms and establish which 25 districts will be up for election in 2004. This bill seeks to retroactively usurp the Commission's duty to assign holdover Senators and give this ability to the Legislature. The Commission amended the plan to fully address the concerns of both **SEN. PERRY**, a Republican from Manhattan, and **SEN. BALES**, a Republican from Otter Creek, in the assignment of new districts. **SEN. JERRY BLACK**, a Republican from Shelby, testified in support of the Commission's assignment of his district and thanked them for their work.

Bob Ream, Chairman of the Montana Democratic Party, maintained SB 258 is unconstitutional. It is another attempt to circumvent the work of the Commission. **SEN. ANDERSON** and **SEN. BOHLINGER** are the only Senators who made comment to the Commission in regard to their Senate Districts. Twenty-three of the twenty-five holdover Senators have not opposed their district assignments. In 1992, we had a very partisan, Republican dominated Commission. In Missoula County, there were nine House seats and three Senate seats that were entirely within the county. The other three were pulled into adjacent counties in order to decrease the affect of the Democratic majority in Missoula County. In 1994, Democrats lost 14 seats in the House and 11 seats in the Senate.

Questions from Committee Members and Responses:

CHAIRMAN DUANE GRIMES asked **Mr. Ream** whether he believed the legislation was unfair. It strikes a reasonable balance. **Mr. Ream** claimed the 1972 Constitution made it clear that the work of the Commission stands. The Legislature may make resolutions. It is unfair in that it is not in accord with the Constitution.

CHAIRMAN GRIMES asked **Greg Petesch, Code Commission**, to address the issue of constitutionality. **Mr. Petesch** reported that he found nothing in the Constitution dealing with the assignment of holdover Senators to districts. He reviewed the Constitutional

language, the statutes implementing the Constitution, and the Constitutional Convention transcripts dealing with Article V. He did not find anything that addressed the assignment of holdover Senators to the newly drawn districts. Traditionally, the Districting and Apportion Commission has assigned holdover Senators as an appendix to the plan that creates the districts. He believed it would be the Legislature's prerogative to clarify that the Legislature wants that duty.

SEN. GLENN ROUSH asked **SEN. THOMAS** if he believed the Constitution set the guidelines, rules, and laws in regard to reapportionment of legislative districts in Montana. **SEN. THOMAS** maintained it was his understanding that the Constitution set up the Apportionment Commission to draw new legislative districts. In regard to holdover Senators, this is not addressed in the Constitution. The Apportionment Commission does not have the right or ability to assign holdover seats unless the Legislature abdicates that right.

SEN. ROUSH noted the last three or four Apportionment Commissions have assigned the holdover Senator districts. He hasn't heard either political party come forward as has been done with this legislation. **SEN. THOMAS** recognized that this has been the case in the past. This time Senators have been blatantly and politically assigned to the wrong districts. One could only conclude the purpose in doing that was for partisan gain.

SEN. ROUSH asked for clarification of Section 1(1). **SEN. THOMAS** stated the first thing that is done is to assign holdover seats in a fair manner. It would be necessary to review which district proposed by the Commission housed the most votes in that Senator's last election.

SEN. ROUSH remarked that the new Senate District he has been assigned is SD 1. No one in the House Districts voted for him.

SEN. THOMAS summarized that when the evaluation is made in regard to assignment as a holdover Senator, it would be necessary to take that point into consideration. This bill will assure that a fair assignment of holdover Senators is made.

SEN. JOE TROPILA asked whether he would be assigned a new district. **SEN. THOMAS** explained a resolution would be requested that would contain 25 slots. Senators would be assigned to the 25 holdover Senate seats. Consideration will need to be given to each and every holdover Senator as to which district they would be assigned. It would be necessary to review where the Senator lived and the district the Senator was in in the old plan.

SEN. TROPILA questioned who would handle the reassessment and reevaluation. **SEN. THOMAS** explained that the resolution would be assigned to a Committee. The Select Committee on Apportionment could work with each Senator so there is input in regard to where they ought to be assigned, taking into consideration the vote in the last election.

SEN. TROPILA questioned whether the Committee members would be assigned in regard to the makeup of the Senate or whether this would be an equally balanced Committee. **SEN. THOMAS** stated that at this time it would be a Republican Majority Committee. He did believe that after the Resolution was in effect, there would not be one person unhappy with his or her assignment because it can be handled fairly and equitably.

SEN. TROPILA asked whether the lawsuit in this regard had been settled. **SEN. THOMAS** stated that the lawsuit is under appeal at this time, but it has been unsuccessful to this date.

SEN. TROPILA stated the criteria used by the Apportionment Commissions in the past has been the same. They have done a credible job. Political positioning has been used in the past. His district was changed from a Democratic district to a Republican district. He maintained that anyone who worked and communicated with the people would be elected. **SEN. THOMAS** claimed that the bill specifically dealt with the assignment of holdover Senators. This is not granted to the Apportionment Commission. The bill states that this will be accomplished by the Legislature using better criteria.

SEN. TROPILA remarked that, according to the record, only two Senators were not satisfied with their district.

SEN. BOB KEENAN remarked that he had a recent conversation with **Joe Lamson, Redistricting Commissioner**. **Mr. Lamson** told him if he had any concerns in regard to the redistricting and apportionment in Northwest Montana, he would be open to reviewing his suggestions. He also made a comment: "Just don't mess with my Kalispell and Whitefish Districts." **SEN. KEENAN** asked **Mr. Lamson** to clarify the comment. **Mr. Lamson** explained that in regard to the constitutionally established process of redistricting, he would disagree with **Mr. Petesch** that the plan would be incomplete if the Commission did not account for the transition of the Senate members. In regard to the Kalispell area, he was hopeful that in this process legislators would come up with specific suggestions that the Commission could consider. The draft resolutions contain general information but very little specific information that the Commission can address. He had concerns about the configurations of the Whitefish District and

the Kalispell District. If the Republicans asked to draw the other districts and not impact the Whitefish and Kalispell Districts, the Commission may look very favorably on that suggestion.

SEN. KEENAN noted that **Mr. Lamson's** answer contained an admission that the Commission was not using the mandated criteria and that there was some effort to establish Republican and Democrat districts over the balance of the 9,022 voters.

Mr. Lamson maintained that the Commission clearly established four mandatory criteria and three discretionary criteria. Part of the discretionary criteria was to review communities of interest. Another category involved was lifestyles. Voting patterns distinguish core beliefs in particular communities. The two districts mentioned are far from Democratic districts. Testimony was given before the Commission that pointed out that the Kalispell district is a far more compact district than before, and more accurately represents the interests of the people in that area.

SEN. KEENAN further questioned the meaning of "my Kalispell and Whitefish districts". **Mr. Lamson** stated that he has particular interest in the Kalispell and Whitefish districts in that they would provide a little diversity to the Flathead County delegation. Voting statistics show that about 40 percent of the people of Flathead County seem to be supporting Democratic candidates in various elections yet very few Democratic representatives appear at the Legislature. By drawing the districts to represent the variety of communities of interests, there would be more diversity and all the voices of Flathead County would be heard rather than one particular persuasion.

CHAIRMAN GRIMES asked **SEN. THOMAS** whether this plan would solve partisan problems in the future. **SEN. THOMAS** affirmed that it would because it removes the potential partisan elements that are brought forward in the Commission. It also provides criteria to be followed in assignment of seats. This hasn't been an issue in the past because assignments have been handled fairly and represented the voter's intent. Since this has not been followed by the present Commission, this issue has arisen.

CHAIRMAN GRIMES questioned whether the language in the bill should provide that the Commission may recommend holdover Senators as opposed to stating the commission may not assign holdover senators. **SEN. THOMAS** claimed that in regard to the current commission, the recommendations would be taken into consideration.

CHAIRMAN GRIMES stated in the past the recommendations of the commission have been used. This is not expressly stated in the bill. He questioned how this may be viewed from a legal standpoint. **Mr. Petesch** explained that the Legislature has never acted in this particular area. The Legislature is free to enact laws in any area it chooses subject only to the restrictions contained in the Constitution. There are no provisions in the Constitution addressing the assignment of holdover senators. If the Legislature chooses to enact legislation directing how that is to be done, that law would be valid and it would have a presumption of constitutionality.

CHAIRMAN GRIMES questioned whether the passage of this law would impact the current lawsuit which is on appeal. **Mr. Petesch** stated it would not.

SEN. SHERM ANDERSON stated that he did oppose the Commission's plan. In Senate District 28, he had proposed an amendment to the Commission. He has not received any word from the Commission that the amendment had been addressed. **Mr. Lamson** stated they had reviewed the amendment and also reviewed the testimony received. Under this legislation, the case could be made that the Commission had assigned the correct district in that the new district **SEN. ANDERSON** was assigned contains large percentages of people who had voted for him in the last election. The problem would be in the residency. The testimony the Commission had received from **SEN. ANDERSON** was in opposition to being tied into the communities of Deer Lodge and Anaconda because no communities of interest were found. Others argued that there was a strong community of interest because of the state institutions, which included the prison and mental health institutions and that the communities had a lot in common. Nothing would prevent **SEN. ANDERSON** from running in the other district.

SEN. ANDERSON stated he has heard **Mr. Lamson** state that communities of interest are definitely expressed by the way people vote. In this instance, the City of Deer Lodge was taken out of the county, which has always been a Republican area, and it has been merged into the City of Anaconda, which has always been clearly a Democratic area. **Mr. Lamson** explained that the City of Deer Lodge had not been a Republican area. There have been Republican and Democratic representatives from that area in the election process. The concern was the constant notion that there was no community of interest in terms of the reliance on these institutions and their particular economy.

SEN. ANDERSON stated that in the amendment proposed, an additional school district was added because the school district was connected to the City of Deer Lodge. It also incorporated

the institutions. On several occasions during the commission process, he had requested to be reassigned to the area which encompassed the city in which he resides. He questioned whether that was considered. **Mr. Lamson** affirmed that it had been considered and will continue to be considered. There will be another executive session after the recommendations are received. By linking the two areas in the senate district, they were able to resolve some of the concerns. The Commission is open to making changes but they need to receive specific proposals in a resolution from the legislature rather than broad discussions of political philosophy.

Closing by Sponsor:

SEN. THOMAS stated that if the assignments of holdover senators were accomplished on a fair and non-partisan basis, this bill would not be needed. He further added that the bill was constitutional.

HEARING ON HB 41

Sponsor: REP. MARK NOENNIG, HD 9, NORTHWEST BILLINGS

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. MARK NOENNIG, HD 9, NORTHWEST BILLINGS, introduced HB 41 which was being brought at the request of the Legislative Council. The purpose of the bill is to clarify the procedure and the authority for appointment of interstate, international, and intergovernmental entities to represent the legislature in a voting capacity. Section 5-11-301 contains some confusing and conflicting language. It states that it is the function of the Legislative Council, within limits of appropriation, to establish delegations and committees as may be considered advisable. It also states that the legislative members of the delegations and committees must be reimbursed and compensated. The language sets out delegations and committees and sets out which ones may be deemed advisable. A problem has arisen in connection with the Council of State Governments, the National Conference of State Legislatures, and the Legislative Council of River Governance. These organizations would make the contact and the legislature would determine who should represent the state. No one knew who had the authority to make that decision. The situation expanded in regard to goodwill trips, conferences, and informational seminars. It was not clear who the attendees should be and also

who would fund this travel expense. The key to the new statute was that the council has the responsibility only when a voting delegation is involved and there is no other statutory appointment. This bill involves those instances in which there is representation for voting purposes. This bill does not affect goodwill tours or informational seminars. Those are still at the request of the entities and subject to the available budget for leadership or otherwise. Section 3 states that unless otherwise provided by law the Legislative Council shall appoint legislators to serve as members. This would be the voting members.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. NOENNIG closed on HB 41.

EXECUTIVE ACTION ON HB 41

Motion: SEN. TROPILA moved that HB 41 BE CONCURRED IN.

Substitute Motion: SEN. KEENAN made a substitute motion that HB 41 BE TABLED.

Discussion:

SEN. KEENAN explained that this bill involves sour grapes over appointments involving a trip to Taiwan and Japan last session. That wasn't mentioned in the presentation of the bill.

Vote: Motion carried 4-2 with ROUSH and TROPILA voting no.

HEARING ON HB 91

Sponsor: REP. TOM FACEY, HD 67, MISSOULA

Proponents: Janice Doggett, Chief Legal Counsel for the Secretary of State

Opponents: None

Opening Statement by Sponsor:

REP. TOM FACEY, HD 67, MISSOULA, introduced HB 91 which extended time frames for appointment of a legislator to fill a vacancy. After the tragic deaths of **SEN. DALE BERRY** and **REP. PAUL SLITER** last interim, he realized that the county commissioners only had 15 days to name a replacement. This bill allows a time frame of 45 days to name a replacement in the case of a vacant House or Senate seat, if legislature is not in session, or has not been called into special session. If the legislature is in session or a special session is called, the current 15 day time frame would remain. In 1998, Mr. Johnson was elected to the House. He was in ill health and resigned before the oath was administered. His replacement was appointed by the county commissioners.

Proponents' Testimony:

Janice Doggett, Chief Legal Counsel for the Secretary of State, rose in support of HB 91 because it does allow for more time to go through the process of appointing a replacement when vacancies occur. The statute states that the central committee needs to make a determination based on a calculation regarding certain circumstances. This is a fairly time consuming process.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. FACEY stated that this does not change the process of the political parties and the county commissioners. It simply gives those entities 45 days to name a replacement when the legislature is not in session.

EXECUTIVE ACTION ON HB 91

Motion/Vote: **SEN. TROPILA** moved that **HB 91 BE CONCURRED IN**.
Motion carried 6-0.

EXECUTIVE ACTION ON SB 258

Motion: **SEN. KEENAN** moved that **SB 258 DO PASS**.

Discussion:

SEN. ROUSH reiterated that this bill involves sheer politics. Today there is the same majority in the House and the Senate. In the future, that may not be the case. If you are a good

candidate, your party affiliation should not make a difference. The majority of the senators are satisfied with the work of the Commission. He further stated that the process should be allowed to work and the voters will decide who they want to represent them.

SEN. KEENAN maintained that this is an opportunity for the Montana State Senate and the individual senators to have some determination of their fate and the districts they may represent. This is what the Senate should do for its membership.

SEN. TROPILA stated that if the committee is unbalanced politically, this could cause a bad situation in the future.

SEN. ANDERSON claimed he tried to work with the process and presented the commission with his dilemma dealing with senate districts. He went from representing three counties to representing seven different counties spread out over 200 miles. He no longer would represent the community in which he resides. He would be representing counties he has not visited. This bill would deal with assignments that were more fair.

CHAIRMAN GRIMES believed this bill would be good for the public process.

Vote: Motion **carried 4-2 with ROUSH and TROPILA voting no.**

ADJOURNMENT

Adjournment: 9:10 A.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/JK

EXHIBIT (les17aad)